

## Index

- #metoo movement, 244, 278
- ABA Formal Opinion 480, 10, 89, 135
- ABA Standards for Criminal Justice, 187, 194–95, 198
- Abrams v. United States*, 67, 264
- absolute sovereign, 39
- oath to, 39–40
  - prohibit criticism of, 41, 178
  - promotion of legitimacy, 39, 178
  - reverence owed to, 49–50
- access to justice theory
- antidiscrimination and antiharassment regulations, 243–78
  - attorney advice and counseling, 123–29, 254–58
  - avoids dilution of First Amendment, 94–95
  - cause lawyering, 268–75
  - civility regulations, 243–78
  - compelled representation, 268–75
  - confidences of client safeguarded, 129–37
  - core protection, 59–60, 129
  - court access and petitioning for redress, 167–78, 254–58
  - criminal justice system, application to, 182–201
  - criticism of judiciary, 158–81
  - formation of attorney-client relationship, 101–18, 268–75
  - in general, 90–97
  - invocation of law, 138–40
  - necessary restrictions, 92–94, 113–17
  - pretrial publicity in civil cases, 204–5, 239–42
  - pretrial publicity in criminal cases, 204–5, 207–39
  - private expression unrelated to law practice, 268
  - protects role of attorney, 94–95
  - publicly employed attorneys, 182–201, 275–76
  - access to justice, defined, 23–25, 90
  - Adams, John, 110–11
  - advising clients. *See* counseling with client
  - Aizenman, Hillary Cohn, 202
  - Alpert, Thomas M., 30–32, 40
  - Alschuler, Albert W., 215–17, 228
  - Andrews, Carol Rice, 28, 84, 121–22
  - antidiscrimination and antiharassment regulations, 243–78
  - Amdt, Jamie, 220–24
  - assembly, right to, 82–84, 128
  - Association of American Law Schools (AALS), 263
  - association, freedom of, 128, 271–74
    - personal guilt, 79–82, 107–13
    - purposes underlying, 76–82  - Attorney Grievance Commission of Maryland v. Gansler*, 235
  - attorney-client privilege, 88, 120–23, 125–26
  - attorney-client relationship
    - right to decline, 268–75
    - right to form, 101–18  - Baradaran, Shiima, 187, 211–12, 232
  - Barclay, William, 50
  - Barrie, J. M., 43
  - Basile, Mary Elizabeth, 262–63
  - Bei Bei Shuai prosecution, 229
  - Bell v. Wolfish*, 211, 214
  - Berger v. United States*, 187–88, 190, 223, 258, 276
  - Bibas, Stephanos, 214–18, 228–29
  - Blackman, Josh, 246, 267, 278
  - Blackstone, William, 30
  - Blasi, Vincent A., 60–61, 91, 159, 225
  - Bloomberg, Michael, 219–20
  - Bodin, Jean, 38–39
  - Boston Massacre trial, 110–11

*Bowles v. Willingham*, 185  
*Brady v. Maryland*, 182, 184, 189–90  
 Brandeis, Louis. *See* *Whitney v. California*  
*Brandenburg v. Ohio*, 45, 66–67, 128–29  
 breathing space for advice and advocacy, 254, 257–58  
*Bridges v. California*, 45–46, 181  
*Brown v. Board of Education*, 96, 256  
 Brown, Lonnie T., 204  
 Bryant, Judith Becker, 221  
 Buchanan, James, 161–62

Caldwell, H. Mitchell, 214–18  
 California Bar Formal Op. No. 2016–195, 134–35  
 candor to the court, duty of, 196–201  
*Caperton v. A.T. Massey Coal Co., Inc.*, 169–70  
 Cardozo, Benjamin, 7, 10, 29, 262  
 Cassidy, R. Michael, 186–87  
 catch-all rules cannot avoid constitution, 158  
 categorical approach, 11–14, 37, 39, 52–53, 76–78, 167, 183, 226, 266–67  
 cause lawyering, 61, 106–7, 116, 270–74  
*Central Hudson Gas & Electric Corp. v. Public Service Commission*, 15  
 Chafee, Zechariah, 64, 67–68, 94–95, 148, 262–63  
 checking value of attorney speech and activities, 61–63, 91, 159–63, 195  
 Chemerinsky, Erwin, 14–15, 175, 204, 223, 231, 235, 239  
 Ciavarella, Mark A., 179  
 civility regulations, 243–78  
   Florida State Bar Creed of Professionalism, 243, 265  
   protection of judiciary, 276–77  
   Utah Standards of Professionalism and Civility, 9, 243–44, 248, 276–77  
 Code of Federal Regulations  
   28 C.F.R. § 50.2, 213, 219, 235  
 Cole, David, 16, 82, 117  
 Cole, Kevin, 16, 204, 230–31  
 communication, duty of. *See* counseling with client  
 communism, 64, 66–68, 75, 79–80, 82–83, 107–15, 264–65  
   attempt to purge bar of, 35, 262–63  
 competence, duty of, 196–201  
 complete knowledge, duty to obtain, 196–201  
 Conahan, Michael T., 179  
 conduct, regulation of rather than speech, 248–49  
 confidentiality, duty of, 87–89, 119–23, 129–37, 196–201, 208–9, 226  
 constitutional conditions theory, 7–10, 37, 39, 51–53, 87, 167, 226, 246–48  
   corollary to, 9, 183–84

contempt statute, 161–62  
 content-based restrictions, 65  
 core First Amendment protection for attorneys, 59–60, 91–92, 129  
 counseling with client, 23–29, 254–58  
 court access, right to, 24, 104–5, 132, 140–43  
 courtroom and court filing speech, 144–48, 167–78, 257–58  
*Craig v. Harney*, 242  
 criminal defense attorneys, 193–201, 207–10, 224–39  
   role of, 88–89, 172

dangerous ideas, 66–70, 148, 153  
 Day, Terri R., 11  
 Declaration of Independence, 264  
*De Jonge v. Oregon*, 82–84, 117–18, 128, 262  
 delegate of state power, attorney as, 37–53, 113–14, 162–63, 253–54  
*Dennis v. United States*, 67–68  
 discrimination. *See* antidiscrimination and antiharassment regulations  
 disqualification statutes, 171  
 Dressler, Jonathan, 187, 210, 214  
 due process, protection of, 23, 91–92, 104, 140–43, 169–74  
 Duke lacrosse team prosecution, 15, 204, 213–14, 218  
 Duncan, Susan Hanley, 204

*Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 84–85, 141–42  
*Elfbrandt v. Russell*, 79–80  
 Ely, John Hart, 163–64  
*Ex Parte Steinman and Hensel*, 161, 163  
 exculpatory evidence, 189–90

fear does not justify suppression, 42–43, 45, 66–70  
 Federal Rules of Civil Procedure  
   Rule 11, 156, 175–78, 256  
 Fein, Steven, 220–24, 228, 233  
 fiduciary duties owed clients, 101, 113, 116–17, 132–33  
 Fifth Amendment right to hire counsel, 78, 104–6  
 First Amendment right to receive information, 159–63  
 First Amendment rights inseparable, 71–86  
 Freedman, Monroe H., 23–24, 84, 93, 109, 125, 192, 194–204, 210, 223–24, 226, 228, 231, 233–34, 237  
 Freedman's trilemma, 196–201  
 French, David, 252  
 Frost, Amanda, 78

Gallagher, William T., 27, 30  
*Garretti v. Ceballos*, 182–85, 189–95

- Garrison v. Louisiana*, 91, 153–55, 158, 164, 167, 261  
*Gentile v. State Bar of Nevada*, 8, 12–13, 17, 144–45, 195, 202–4, 207, 210, 212, 220, 225, 232, 236–39, 248  
*Gideon v. Wainwright*, 24, 104  
 Gillers, Stephen, 246–47, 249–50, 258, 269–70, 274–75  
 government-funded speech, 191–92  
 Green, Bruce A., 161  
 Gross, Samuel R., 216  
 Gundlach, Jennifer, 202
- Halaby, Andrew F., 244, 248–49  
 Hand, Learned, 65  
 harassment. *See* antidiscrimination and antiharassment regulations  
 Haupt, Claudia E., 12, 28, 247  
 Hazard, Geoffrey C., 23, 132–33  
*Healy v. James*, 79, 81  
 Hobbes, Thomas, 39–41, 52  
 Hodes, W. William, 132–33  
*Holder v. Humanitarian Law Project*, 13, 17, 26, 34, 62, 68–70, 73–78, 80–82, 84, 86, 96, 101–2, 106–10, 113–14, 117, 127–29, 139–40  
 Holmes, Oliver Wendell, 67, 225  
*Hunter v. Virginia State Bar*, 87–89, 94, 119–20, 133–37, 200–1
- Idaho State Bar v. Topp*, 155–56  
 Imrich, D.J., 222  
*In re Abbott*, 151  
*In re Anonymous*, 135  
*In re Anonymous Member of South Carolina Bar*, 247–48  
*In re Arnold*, 265  
*In re Atanga*, 149–50, 157, 166  
*In re Cobb*, 157, 175  
*In re Glenn*, 7, 166  
*In re Mire*, 167–69, 175, 181  
*In re Ogden*, 179  
*In re Primus*, 14, 114–16  
*In re Raggio*, 164–65  
*In re Rouss*, 7, 29  
*In re Sawyer*, 7–8, 17, 27  
*In re Shimek*, 151  
*In re Terry*, 150  
*In re Westfall*, 151, 156–57  
 integrated bar movement. *See* unified bar movement  
 Iowa retention election 2010, 35
- James I, 41  
 Jefferson, Thomas, 58, 265  
*Johanns v. Livestock Marketing Ass'n*, 191
- judiciary  
 attorneys enable power of, 25, 48–49, 104–5, 174  
 civility regulations, 276–77  
 constitutional right to impartial judge, 169–74  
 disqualification of, 171  
 First Amendment rights of, 279–80  
 informed public regarding, 159–63  
 inherent power to regulate lawyers, 30–31, 40  
 objective reasonableness standard for criticism of, 154–57  
 power to admit and disbar lawyers, 29–30, 35, 43  
 preserving actual integrity of, 46–49, 158–81  
 preserving public perception of integrity of, 45–46, 153, 165–67  
 prohibit and punish criticism of, 41–43, 66, 149–81  
 proof of falsity of statements regarding, 157–58  
 reverence owed to, 49–51, 276–77  
 self-entrenchment, 163–67  
 subject to political pressure, 35
- Kalven, Harry, 57–58, 92  
*Kentucky Bar Ass'n v. Heleringer*, 151, 178  
*Kentucky Bar Ass'n v. Waller*, 157  
 Kerr, Norbert L., 220–24  
 Khan, L. Ali, 246–47, 250–51  
 Kincannon, J. Todd, 266–67  
 Kitai, Rinat, 187, 211  
 Knake, Renee Newman, 14, 134–35  
 Kozinski, Alex, 278  
*Kyles v. Whitley*, 189–90
- Landmark Communications, Inc. v. Virginia*, 46  
 law, invocation of, 21–23, 63–64, 138–40  
*Legal Services Corp. v. Velazquez*, 13–14, 17, 26, 34, 66, 85, 145–46, 173–74, 256–57  
 LeVasseur, Michelle, 221  
 Levenson, Laurie L., 204  
 Lieberman, Joel D., 220–24  
 Lindquist, Stefanie, 78  
 Locke, John, 44, 46–47, 50–52  
 Loeng, Nancy, 266  
 Long, Brianna L., 246, 248–49  
 Lynk, Myles, 246–49
- Madison, James, 44, 58, 265  
*Marbury v. Madison*, 25  
 Margulies, Peter, 204  
 Martin, Trayvon. *See* Zimmerman, George, prosecution  
*Matal v. Tam*, 65–66, 264–65  
 Maute, Judith L., 16, 204  
 Mazzone, Jason, 75, 83, 272  
 McEvoy, Cathy, 221

- McIntyre v. Ohio Elections Comm'n*, 140  
 Meiklejohn, Alexander, 44, 58–59, 63, 90, 92–93, 146–48, 225, 264–65  
*Milavetz, Gallop & Milavetz v. United States*, 15–16, 33, 126  
*Missouri v. Frye*, 187, 214  
*Mitchum v. Foster*, 178  
 Model Code of Judicial Conduct, 171  
 Model Code of Professional Responsibility, 121, 129  
 Model Rules of Professional Conduct, 255  
   Preamble & Scope, 27–28, 106, 270  
   promulgation of, 32  
   Rule 1.16, 269  
   Rule 1.2, 114, 129, 254–55  
   Rule 1.6, 87, 121  
   Rule 3.1, 156, 175–78, 256  
   Rule 3.3, 199–200  
   Rule 3.6, 202–4, 227, 233–36, 238–39  
   Rule 3.8, 190, 217  
   Rule 4.1, 235–36, 239  
   Rule 6.2, 110, 275  
   Rule 8.2, 154, 175–78  
   Rule 8.4, 235  
   Rule 8.4(g), 244–78  
 Mosteller, Robert P., 15, 186, 204, 218
- NAACP *v. Alabama ex rel. Patterson*, 74–75  
*NAACP v. Button*, 13, 17–19, 26, 34, 61–62, 72–75, 78, 85, 96, 101–2, 106–7, 114–17, 140–41, 158, 249, 253, 257–58, 262, 264, 271–74  
*NAACP v. Claiborne Hardware Co.*, 79, 81, 111–12  
*New York Times v. Sullivan*, 44, 57–59, 63–65, 67, 153–55, 158, 160, 164–67, 173, 175–78, 252, 259, 261, 265, 277  
 Nifong, Michael. *See* Duke lacrosse team prosecution  
*Nix v. Whiteside*, 199  
*Noerr-Pennington* doctrine, 84–85, 141–42  
 Norton, Helen, 191
- oath of attorney, 8–9, 39–40, 51–53, 248, 280  
*Obergefell v. Hodges*, 256  
 Oberlander, Frederick M., 43, 150  
 objective reasonableness standard for punishing speech, 154–57, 250–52  
 officer of the court, attorney as, 30, 37–53, 162–63, 280  
 Ogden, Paul K., 179  
*Ohralik v. State of Ohio*, 114–16  
*Oklahoma Bar Ass'n v. Porter*, 160  
 open courts, 136, 241–42  
 Operation Wrinkled Robe, 178  
 Otto, Amy L., 220–24
- Paul v. Davis*, 218  
 Peck, James H., impeachment of, 161–62  
 Pence, Linda, 229  
 Penrod, Steven D., 224  
*Peter Pan*, 43  
*Peters v. Pine Meadow Ranch Home*, 277  
 Petition for redress, right in general, 84–86, 140–43  
*Pickering v. Board of Education of Township High School District 205*, 183  
 plea bargaining, 187, 214–18, 228–31  
*Polk County v. Dodson*, 194  
 popular sovereignty, 43–45, 52–53, 58, 272, 276  
 Porteous, Thomas, 178  
*Powell v. Alabama*, 24, 78, 103–4  
*Press-Enterprise Co. v. Superior Court*, 242  
 presumption of innocence, 211–14, 226–28  
 pretrial detention, 232  
 private expression unrelated to law practice, 265–68  
 pro se, 85, 142  
   organizations and associations cannot appear for self, 85, 142  
*Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 141  
 prosecutors, 182–93, 207–24, 234–39  
 publicly employed attorneys, 182–201, 275–76
- Quintard-Morenas, Francois, 211, 226, 232
- Raggio, William J., 164–65  
 red scares. *See* communism  
*Republican Party of Minnesota v. White*, 14, 279–80  
 reputation of an accused, 218–20, 231–32  
 Resta, Giorgio, 223  
 Restatement (Third) of the Law Governing Lawyers, 125, 210, 219  
 Rhode, Deborah, 24, 62  
*Richmond Newspapers v. Virginia*, 242  
*Roberts v. United States Jaycees*, 75  
 Ruva, Christine, 221
- Scales v. United States*, 79, 81, 107  
 Schauer, Frederick, 10–11, 18–22, 26, 93–95, 97, 144–45, 280  
 Schulhofer, Stephen J., 214–18, 228  
*Seattle Times Co. v. Rhinehart*, 130–34, 136, 240–42, 254  
 Sedition Act of 1798, 58, 153, 265  
 self-incrimination, right against compelled, 196–99  
 self-regulation of lawyers, 27–36  
   co-regulation by other government entities, 33–34  
   subject to constitution, 32, 34–36, 247  
 Shakespeare, William, 96

- Sharswood, George, 161, 163  
 Sisk, Gregory C., 125  
 Sixth Amendment right to counsel, 78, 102–6, 108, 195, 208  
 Sixth Amendment right to jury trial, 220–24, 232–34  
 Smith, Abbe, 23–24, 84, 93, 109, 125, 194–201, 204, 226  
 socialism. *See* communism  
 solicitation of clients, 114–16  
 Sorrell v. IMS Health, Inc., 14  
 Southern Union Co. v. United States, 187  
 Stansbury, Arthur J., 161–62  
 Starwood, Janet, 192, 203–4, 210, 223–24, 228, 231, 233–34, 237  
 State v. Santana-Ruiz, 172  
 Steblay, Nancy M., 220–24  
 Stone, Geoffrey, 96  
 Strauss-Khan, Dominique, 219–20  
 Stropnick v. Nathanson, 271–75  
 Studebaker, Christina A., 224  
 Sullivan, Kathleen, 11–12  
 Sunstein, Cass R., 167  
 Swisher, Keith, 259
- terrorism. *See* Holder v. Humanitarian Law Project  
 Terry, Laurel S., 33  
 testify on own behalf, right of accused to, 196–99  
 Thomas v. Collins, 71–72  
 Thomas, George C., III, 187, 210, 214  
 Tinkerbelle solution to judicial integrity, 43, 48, 150, 180–81  
 transactional work, 21–22, 138–39  
 travel ban January 2017, 61–62  
 Trump, Donald J., 61  
 Tumey v. Ohio, 169–70  
 tyranny of majority, 35–36, 78–79, 247
- Uelmen, Gerald F., 16, 204, 231  
 unified bar movement, 31–32  
 United Mine Workers v. Pennington, 84  
 United States v. Robel, 81, 107  
 United States v. Shaffer Equipment Co., 147, 175  
 Uphoff, Rodney, 216  
 USA PATRIOT Act. *See* Holder v. Humanitarian Law Project  
 Utah v. Santana-Ruiz, 277
- viewpoint-based restrictions, 65–66, 153, 237, 257  
 Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 159, 261  
 Volokh, Eugene, 248, 252, 263–64  
 vouching for an accused's innocence or guilt, 227–28, 236
- Wald, Eli, 124  
 Wendel, W. Bradley, 9, 11  
 West Virginia State Board of Education v. Barnette, 261  
 White, Penny, 35  
 Whitelocke, Lord Bulstrode, 122  
 Whitney v. California, 47–48, 51–52, 63–64, 66–68, 181, 261–62  
 Williams-Yulee v. Florida Bar, 20–21, 46, 279–80  
 Wittgenstein, Ludwig, 90  
 Wolfram, Charles W., 29–30  
 Writ of Habeas Corpus, 61  
 wrongful convictions, 190–91, 216
- Zacharias, Fred C., 16, 28, 32, 204, 215, 230–31  
 Zimmerman, George, prosecution, 202, 236–37